

**立法會**  
***Legislative Council***

LC Paper No. CB(1)1250/03-04  
(These minutes have been seen  
by the Administration)

Ref: CB1/BC/18/02

**Bills Committee on Companies (Amendment) Bill 2003**

**Minutes of the sixteenth meeting  
held on Saturday, 28 February 2004, at 9:30 am  
in Conference Room B of the Legislative Council Building**

**Members present** : Hon Audrey EU Yuet-mee, SC, JP (Chairman)  
Hon Albert HO Chun-yan  
Dr Hon Eric LI Ka-cheung, GBS, JP  
Hon CHAN Kam-lam, JP  
Hon Emily LAU Wai-hing, JP

Non-Bills Committee Member  
Hon Miriam LAU Kin-yee, JP

**Members absent** : Hon Mrs Sophie LEUNG LAU Yau-fun, SBS, JP  
Dr Hon Philip WONG Yu-hong, GBS  
Hon SIN Chung-kai  
Hon Henry WU King-cheong, BBS, JP

**Public officers attending** : Financial Services and the Treasury Bureau  
  
Ms Shirley LAM  
Principal Assistant Secretary for Financial Services and  
the Treasury (Financial Services) 4  
  
Mr Arthur AU  
Assistant Secretary for Financial Services and  
the Treasury (Financial Services) (4) 1

Companies Registry

Mr G W E JONES  
Registrar of Companies

Mr Edward LAU  
Secretary, Standing Committee on  
Company Law Reform

Department of Justice

Mr Allen LAI  
Senior Government Counsel

**Clerk in attendance** : Ms Anita SIT  
Chief Council Secretary (1)6

**Staff in attendance** : Miss Monna LAI  
Assistant Legal Adviser 7

Mr Matthew LOO  
Senior Council Secretary (1)3

---

**I Meeting with the Administration**

LC Paper No. CB(1)1139/03-04 (01) - Draft Committee Stage amendments relating to Order of Inspection provided by the Administration on 27 February 2004

LC Paper No. CB(1)1139/03-04 (02) - List of issues requiring follow-up actions by the Administration on Schedule 4 of the Bill (Position as at 27 February 2004)

LC Paper No. CB(1)2504/02-03 (01) - Submission dated 22 September 2003 from the Chinese General Chamber of Commerce

- LC Paper No. CB(1)2521/02-03 (03) - Administration's response to written submissions from the Association of International Accountants, the Chinese General Chamber of Commerce and the Stock Exchange of Hong Kong Limited
- LC Paper No. CB(1)2504/02-03 (04) - Submission dated 5 September 2003 from Consumer Council
- LC Paper No. CB(1)2521/02-03 (04) - Administration's response to written submission from Consumer Council
- LC Paper No. CB(1)2504/02-03 (05) - Submission dated 16 September 2003 from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)2521/02-03 (05) - Administration's response to written submission from Office of the Privacy Commissioner for Personal Data, Hong Kong
- LC Paper No. CB(1)2504/02-03 (11) - Submission dated 22 September 2003 from Linklaters
- LC Paper No. CB(1)798/03-04 (01) - Administration's response to written submission from Linklaters
- LC Paper No. CB(1)2504/02-03 (12) - Submission dated 22 September 2003 from the Stock Exchange of Hong Kong Limited
- LC Paper No. CB(1)2504/02-03 (13) - Submission dated 22 September 2003 from the Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)798/03-04 (02) - Administration's response to written submission from the Hong Kong Institute of Company Secretaries
- LC Paper No. CB(1)2521/02-03 (01) - Submission dated 25 September 2003 from the Hong Kong Chinese Enterprises Association

- LC Paper No. CB(1)2521/02-03 (02) - Submission dated 25 September 2003 from School of Business, Hong Kong Baptist University
- LC Paper No. CB(1)798/03-04 (03) - Administration's response to written submission from School of Business, Hong Kong Baptist University
- LC Paper No. CB(1)185/03-04 (01) - Submission dated 27 October 2003 from Hong Kong Society of Accountants
- LC Paper No. CB(1)798/03-04 (04) - Administration's response to written submission from Hong Kong Society of Accountants
- LC Paper No. CB(1)934/03-04 (03) - Submission dated 2 February 2004 from Hong Kong Society of Accountants
- LC Paper No. CB(1)217/03-04 (01) - Submission dated 21 October 2003 from Hong Kong Small and Medium Enterprises Association
- LC Paper No. CB(1)798/03-04 (05) - Administration's response to written submission from Hong Kong Small and Medium Enterprises Association
- LC Paper No. CB(1)786/03-04 (01) - Submission dated 12 January 2004 from Mr Winston POON, SC, Mr Godfrey LAM, Barrister, Ms Linda CHAN, Barrister
- LC Paper No. CB(1)971/03-04 (01) - Administration's response to written submission from Mr Winston POON, SC, Mr Godfrey LAM, Barrister, Ms Linda CHAN, Barrister
- LC Paper No. CB(1)946/03-04 (01) - Submission dated 5 February 2004 from Mr Winston POON, SC
- LC Paper No. CB(1)1041/03-04 (03) - Administration's response to written submission from Mr Winston POON, SC

- LC Paper No. CB(1)1041/03-04 (04) - Summary of written submissions and the Administration's response on Schedule 4 of the Bill (Position as at 19 February 2004)
- LC Paper No. CB(1)2425/02-03 (01) - Letter dated 29 August 2003 from Assistant Legal Adviser 7 (ALA7) to the Administration on Schedule 4 of the Bill
- LC Paper No. CB(1)849/03-04 (01) - Administration's response dated 17 January 2004
- LC Paper No. CB(1)1108/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 12 February 2004 on Schedule 4
- LC Paper No. CB(1)1041/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 5 February 2004 on Schedule 4
- LC Paper No. CB(1)934/03-04 (01) - Administration's paper on follow-up actions arising from the discussion at the meeting on 29 January 2004 on Schedule 4
- LC Paper No. CB(1)798/03-04 (06) - Administration's paper on follow-up actions arising from the discussion at the meeting on 2 October 2003 on Schedule 4
- LC Paper No. CB(1)798/03-04 (07) - Administration's paper on international comparisons of shareholders' remedies

The Bills Committee continued the scrutiny of Schedule 4 of the Bill (Amendments relating to shareholders' remedies).

2. The Administration undertook to consider and provide information on the following matters -

Clause 3 - Order for inspection

(a) On the proposal to impose a minimum shareholding requirement or a minimum number of shareholders requirement for making an application for an order to inspect records of a specified corporation, the draft Committee Stage amendments (CSAs) to proposed section 152FA should be revised to the effect that -

(i) the court may make an order for inspection on application by -

(I) any number of member(s) representing not less than one-fortieth of the total voting rights of all members having at the date of the application a right to vote at any general meetings of the specified corporation; or

(II) not less than a specified number of members (for example, 5 members) holding shares in the specified corporation; or

(III) any number of member(s) holding shares in the specified corporation at a total par value of not less than, say, \$100,000.

The Administration is requested to provide some practical information for members' reference in considering the appropriate number of member(s) and total sum mentioned in (II) and (III) above.

(ii) instead of simply giving consent in writing for an application, all the member(s) mentioned in (i) above should be the joint applicants of an order for inspection.

(b) To revise the new section 152FA(5) by -

(i) replacing the words "a confidentiality agreement" by "an agreement"; and

(ii) replacing the words "releasing the records" by "disclosing the information contained in the records to be inspected under the order".

(c) (i) To check whether there are provisions in the existing banking laws in Hong Kong governing the disclosure of information relating to the affairs of the customers of banks, and in light of these provisions, if any, to review the propriety of the proposed saving provision for bankers under proposed section 152FD(2); and

(ii) To check the equivalent provisions, if any, in other jurisdictions on the protection of customer information.

- (d) To revise proposed section 152FE if the court may make any order under proposed section 152FD.

Clause 6 - Injunctions

- (e) To provide court cases in Australia to illustrate how the statutory provisions on injunctions in Australia have been applied.
- (f) To consider whether the court should be empowered to require an applicant for an injunction under proposed section 350B to give an undertaking as to damages when the court grant an interim injunction and/or an injunction.

**II Any other business**

Date of next meeting

- 3. Members noted that the next meeting would be held on Thursday, 11 March 2004 at 8:30 am. The Bills Committee would continue the clause-by-clause examination of Schedule 4 of the Bill (Amendments relating to shareholders' remedies) and deliberate other outstanding issues at the next meeting.
- 4. There being no other business, the meeting ended at 11:30 am.
- 5. The index of proceedings of the meeting is at **Appendix**.

Council Business Division 1  
Legislative Council Secretariat  
10 March 2004

**Proceedings of the meeting of the  
Bills Committee on Companies (Amendment) Bill 2003**

**16th meeting on Saturday, 28 February 2004, at 9:30 am  
in Conference Room B of the Legislative Council Building**

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
000000 - 000147	Chairman	Welcoming and introductory remarks	
000148 - 000220	Chairman Administration	Briefing by the Administration on the draft Committee Stage amendments (CSAs) relating to Order of Inspection <i>[CB(1)1139/03-04 (01)]</i>  Clause-by-clause examination of clause 3 of Schedule 4 of the Bill ( <b>section 152FA</b> ( <i>Order for inspection</i> )))	
000221 - 005803	Chairman Administration ALA7 Ms Emily LAU Mr Albert HO Ms Miriam LAU Dr Eric LI	<b>Sections 152FA(1) and 152FA(2)</b> and draft CSAs in relation to a minimum shareholding requirement or a minimum number of shareholders requirement for application for an order for inspection  The Administration's proposal of requiring the applicant to obtain the consent of a certain number of members who however were not parties to the application	Administration to take follow-up action set out in paragraph 2(a) of the minutes



Time marker	Speaker	Subject(s)	Action required
000221 - 005803 (Cont'd)		<p>Members considered that as the members giving the consent would not be entitled to inspect the records of the specified corporation nor have any legal liability in respect of the application, it was questionable whether the proposed arrangement could achieve the objective of setting a reasonable threshold to prevent abuse of the "inspection of records" remedy for an ulterior purpose of a member who might held minimal number/amount of shares of the specified corporation.</p> <p>ALA7 pointed out that under Rule 4 of Order 15 (Joinder of parties) of the Rules of the High Court (Cap. 4A) "<i>Where the plaintiff in any action claims any relief to which any other person is entitled jointly with him, all persons so entitled must, subject to the provisions of any written law and unless the Court gives leave to the contrary, be parties to the action and any of them who does not consent to being joined as a plaintiff must, subject to any order made by the Court on an application for leave under this paragraph, be made a defendant.</i>" and asked the Administration to clarify whether the inspection of record remedy would be subject to this rule and whether express provisions would be made to reflect the policy.</p>	

Time marker	Speaker	Subject(s)	Action required
000221 - 005803 (Cont'd)		<p>The Administration explained that the proposed arrangement was to avoid burdening the specified corporation with repeated inspections of records, which would be the case if the threshold requirement was to require a certain number of members to be joint parties to the application. Moreover, as joint parties to the application would incur liabilities such as the liability to the cost of the action, the threshold requirement might become unduly burdensome for a minority shareholder who wished to apply for inspection of records in good faith and for a proper purpose.</p> <p>Members considered that it would only be proper for all the members under the threshold requirements to be parties to the application, but the number of members or the amount of shareholding in the threshold requirements could be adjusted to strike a proper balance.</p> <p>Members also considered that as the members being joint parties to the application held the same purpose in seeking inspection of the records of the specified corporation and the court in making an order for inspection could authorize a person other than the applicant to inspect the records, the problem of repeated inspections of records as envisaged by the Administration should not arise in practical situations.</p>	
005804 - 005822	Chairman Administration	New <b>section 152FA(2)(b)</b>	Administration would replace the word "company" by "specified corporation"

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
005823 - 005910	Chairman ALA7	<b>Section 152FA(3)</b> and draft CSAs	
005911 - 005923	Chairman	<b>Section 152FA(4)</b>	
005924 - 010609	Chairman Administration ALA7 Mr Albert HO Ms Miriam LAU	<p>New <b>section 152FA(5)</b></p> <p>ALA7 suggested that to obviate the burden on the person producing the records in compliance with the court's order of the need to show evidence when defending himself against any claim arising from an agreement preventing him to disclose the records, it might be desirable to include a provision stating that the court order shall be conclusive evidence along the line of <b>section 145(3B)</b>.</p> <p>The Administration explained that unlike the requirement made by an inspector appointed by the Financial Secretary referred to in <b>section 145</b>, the order made under <b>section 152FA</b> was a court order, which on its own, should be conclusive evidence.</p>	Administration to take follow-up action set out in paragraph 2(b) of the minutes
010610 - 010713	Chairman Administration ALA7	<b>Section 152FB</b> ( <i>Ancillary orders</i> )	

Time marker	Speaker	Subject(s)	Action required
010714 - 011139	Chairman Administration ALA7	<p><b>Section 152FC</b> (<i>Disclosure or use of information or document obtained as a result of inspection</i>)</p> <p><b>Section 152FC(1)</b> and draft CSAs</p> <p>In response to ALA7's concern on whether the meaning of "proper purpose" in <b>section 152FC(2)</b> was precise enough, the Administration explained that the applicant would need to set out the purpose in making an application for inspection of records and the court would decide whether the purpose was a proper purpose. Hence, there should be no ambiguity about what the "proper purpose" in <b>section 152FC(2)</b> was referring to.</p>	
011140 - 011217	Chairman Administration	<b>Section 152FC(3)</b>	
011218 - 011254	Chairman Administration	<p><b>Section 152FC(4)</b></p> <p>Clause 7 of the Schedule 4 of the Bill (amendment to the Twelfth Schedule)</p>	
011255 - 013556	Chairman Administration ALA7 Mr Albert HO Ms Emily LAU Ms Miriam LAU Mr CHAN Kam-lam	<p><b>Sections 152FD</b> (<i>Saving for solicitors and bankers</i>) and <b>152FE</b> (<i>Protection of personal data</i>)</p> <p>Members considered and the Administration concurred that given the proviso of "<i>unless the court orders that it is necessary to do so for the proper purpose referred to in <b>section 152FA(3)(b)</b></i>", proposed new <b>section 152FD(2)</b> would appear to be superfluous.</p>	Administration to take follow-up actions set out in paragraphs 2(c) and 2(d) of the minutes

Time marker	Speaker	Subject(s)	Action required
011255 - 013556 (Cont'd)		<p>Members also raised concern on whether there were already provisions in the banking laws governing the disclosure of the information on banks' customers, and if so, any saving provision for bankers in the present context would need to be compatible with such existing provisions.</p> <p>ALA7 advised that <b>section 152FE</b> only covered the data of living individuals; the data of corporations were not covered.</p> <p>The Administration referred to the definition of "personal data" in the Personal Data (Privacy) Ordinance (Cap. 486) and advised that information relating to an individual but from which it was not practicable for the identity of the individual to be directly or indirectly ascertained would not be covered by <b>section 152FE</b>.</p>	
013557 - 013813	Chairman Administration	Chinese version of draft CSAs and other outstanding issues	
013814 - 014649	Chairman Administration Ms Miriam LAU ALA7 Ms Emily LAU	<p>Clause-by-clause examination of clause 6 of Schedule 4 of the Bill (<b>Section 350B (Injunctions)</b>)</p> <p><b>Sections 350B(1) and 350B(2)</b></p> <p>The Administration pointed out that <b>section 350B</b> was mirrored from similar provisions in Australia.</p>	Administration to take follow-up action set out in paragraph 2(e) of the minutes

<b>Time marker</b>	<b>Speaker</b>	<b>Subject(s)</b>	<b>Action required</b>
013814 - 014649 (Cont'd)		Members noted that the recommendation of the Standing Committee on Company Law Reform on the need to provide statutory shareholders' remedy on injunctions. <i>[Para 19.02 of the Corporate Governance Review by the Standing Committee on Company Law Reform]</i>  Members noted that the two submissions providing views on this issue were in support of the proposed provisions on injunctions.	
014650 - 014712	Chairman Administration	<b>Section 350B(3)</b>	
014713 - 014725	Chairman Administration	<b>Section 350B(4)</b>	
014726 - 014734	Chairman Administration	<b>Section 350B(5)</b>	
014735 - 014744	Chairman Administration	<b>Section 350B(6)</b>	
014745 - 014859	Chairman Administration	<b>Section 350B(7)</b>	
014900 - 015112	Chairman ALA7	Chinese version of <b>section 350B</b>	
015113 - 015248	Chairman Ms Miriam LAU Ms Emily LAU	Whether the court should be empowered to require the applicant to give undertaking as to damages.	Administration to take follow-up action set out in paragraph 2(f) of the minutes